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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/008,241 01/16/98 STUTZ

D 777.115USR

EXAMINER

TM02/0730

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COURTENAY III, S

ART UNIT

PAPER NUMBER

2151
DATE MAILED:

07/30/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

SR

Office Action Summary

Application No.
09/008,241

Applicant(s)
Stutz et al.

Examiner
St. John Courtenay III

Art Unit
2151



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 16, 1998
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5
- 18) ☐ Interview Summary (PTO-413) Paper No(s).
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

St. John Courtenay III

Response to Reissue Application

Reissue Application 09/008,241 corresponding to U.S. Pat No. 5,485,617.

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

An exact copying of the new claim does not meet the requirement See M.P.E.P. 1414 (i.e., "it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error"). Stating that one did not claim that which is now claimed, without identifying the specific feature, does not meet the requirement.

2. Claims 1-52 (*the Examiner has renumbered claims 50-53 as 49-52 – see note below*) are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

3. The amendments do not comply with reissue practice.

See M.P.E.P. §1455 re: CLAIM NUMBERING.

All bracketing and underlining in an amendment is made in comparison to the **original patent**, not in comparison to the prior amendment. With respect to the Certificate of Correction in the original patent, Applicant should include/make any changes, additions, or deletions **without** using underlining or [brackets]. Furthermore, please note the rules change for the manner of making amendments in Reissue Applications. 37 C.F.R. 1.121 for regular U.S. applications and 37 C.F.R. 1.173 for Reissue applications.

While the Examiner appreciates the underlined and bracketed copy, claims that are newly presented with respect to the patent document should have been underlined in their entirety. With respect to claim numbering, there is no claim 49. The Examiner has renumbered claims 50-53 as 49-52.

4. There are no formal drawings. The Examiner takes notice of the REQUEST TO TRANSFER DRAWINGS in accordance with M.P.E.P. §1413, & §1455 re: TRANSFER OF DRAWINGS.

5. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

6. The Examiner has included a PTO-892 form that makes of record the art cited in U.S. Patent 5,485,617. The Examiner has considered the cited references and initialed the PTO-1449 form received 12-21-1999.

7. The Examiner has reviewed the file of U.S. Patent 5,485,617 and performed a search. There is no issue of recapture.

How to Contact the Examiner:

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **St. John Courtenay III** whose voice telephone number is **(703) 308-5217**. A voice mail service is also available at this number.

- **All responses sent by U.S. Mail should be mailed to:**
Commissioner of Patents and Trademarks
Washington, D.C. 20231
- **Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).** All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses directly to the Examiner.

All FORMAL or OFFICIAL faxes must be signed and sent to either (703) 308-9051 or (703) 308-9052.

OFFICIAL faxes will be handled and entered by the docketing personnel. The date of entry will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be sent to another area of the Office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 305-9600**.

ST. JOHN COURTENAY III


PRIMARY EXAMINER
Art Unit 2151

Friday, July 27, 2001